

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK

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SANDRA DAY O'CONNOR U. S. COURTHOUSE,
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PHOENIX, ARIZONA 85003-2118

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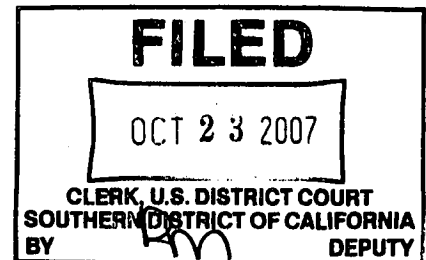
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TUCSON, ARIZONA 85701-5010

October 22, 2007

United States District Court
Southern District of California
4290 Edward J. Schwartz United States Courthouse
940 Front Street
San Diego, CA 92101

Dear Clerk,

RE: CV 07-1890-PHX-NVW



Pursuant to the order of this court, the above captioned case is being transferred to your Court for all further proceedings. Enclosed is certified copy of the transfer order and docket sheet. The complete case file may be accessed via our website at: www.azd.uscourts.gov.

Please acknowledge receipt of the same and indicate your district's case number on the enclosed copy of this letter and return. Thank you.

Sincerely,

RICHARD H. WEARE, Clerk/DCE

S/ K. Gerchar
K. Gerchar, Deputy Clerk

cc: all counsel

Receipt is acknowledged of the documents described herein.

New Case Number: 07CV 2057 JAH (LSP)

R. Mullen
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Cyrus Keki Maloo,
Petitioner,
vs.
Warden Bruno Stolc,
Respondent.

No. CV 07-1890-PHX-NVW (JCG)

ORDER

Petitioner Cyrus Keki Maloo, who is currently confined in the Eloy Detention Center (EDC) in Eloy, Arizona,¹ has filed a *pro se* "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody" naming EDC Warden Bruno Stolc as Respondent. (Doc.# 1.)² Petitioner has not paid the \$5.00 filing fee. (*Id.*) Petitioner challenges his criminal conviction and sentence entered in California state court. Petitioner has also filed a "Motion for Temporary Restraining Order to Stay Further Deportation Proceedings Until After his 28 U.S.C. § 2254 Has Been Adjudicated." (Doc.# 3.) The Court will transfer this action to the District of California pursuant to 28 U.S.C. § 1404(a) and deny the motion for a temporary restraining order.

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¹ Immigration and Customs Enforcement (ICE) currently has legal and physical custody of Petitioner as an immigration detainee.

² "Doc.#" refers to the docket number of documents filed in this case.

1 **I. Background**

2 Petitioner alleges the following facts. Petitioner was convicted of arson of an
3 inhabited structure in the Superior Court of California, Northwest District pursuant to a guilty
4 plea and sentenced to three years in prison on June 27, 2005. (Doc.# 1 at 2.) Petitioner did
5 not file a direct appeal. ICE apparently initiated deportation proceedings against Petitioner
6 based upon his California conviction.

7 **I. Motion for a Temporary Restraining Order**

8 In his motion for temporary restraining order, Petitioner asks the Court to stay his
9 deportation proceedings pending resolution of his § 2254 petition. As an initial matter, the
10 Court has been informed by ICE General Counsel that a final order of removal has not been
11 entered against Petitioner and that a master hearing in Petitioner's deportation proceedings
12 is not scheduled to occur until November 1, 2007. In short, removal from the United States
13 is not imminent.

14 Further, a petitioner seeking to challenge deportation proceedings must file a petition
15 pursuant to 28 U.S.C. § 2241. Magana-Pizano v. INS, 200 F.3d 603, 609 (9th Cir. 1999).
16 Petitioner may not seek relief with respect to his immigration proceedings in an action
17 brought pursuant to 28 U.S.C. § 2254. For these reasons, Petitioner's motion for a temporary
18 restraining order will be denied.

19 **II. Transfer of Venue**

20 A district court may transfer "any civil action to any other district or division where
21 it might have been brought" for the convenience of the parties and witnesses or in the interest
22 of justice. 28 U.S.C. § 1404(a). The decision to transfer under § 1404(a) lies within the
23 discretion of the district court and should be determined based upon notions of convenience
24 and fairness on a case-by-case basis. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29
25 (1988).

26 **A. This Action Could Have Been Brought in the District of California**

27 Jurisdiction to hear a habeas corpus petition lies in any district court having
28 jurisdiction over the petitioner's custodian. See Braden v. 30th Jud. Circuit Court of Ky, 410

U.S. 484, 495 (1973) (construing 28 U.S.C. § 2241(a)). A district court can issue a habeas writ “within its jurisdiction” so long as the custodian can be reached by service of process. Id. In amending the habeas corpus statutes, Congress has indicated that a habeas case should be “resolved in the court which originally imposed the confinement or in the court located nearest the site of the underlying controversy.” Id. at 497 (citing H. R. Rep. No. 1894, 89th Cong., 2d Sess. (1966); S. Rep. No. 1502, 89th Cong., 2d Sess. (1966) U.S. Code Cong. & Admin. News 1966, p. 2968; and United States v. Hayman, 342 U.S. 205 (1952)); see also Ortiz-Sandoval v. Gomez, 81 F.3d 891, 895 (9th Cir. 1996) (citing Braden, 410 U.S. at 498-99); McCool v. New York State, 29 F.Supp.2d 151, 158 (W.D.N.Y. 1998).

The conviction and sentence Petitioner challenges in this action were entered in California state court. Therefore, this § 2254 action could have originally been brought in the Southern District of California.³

B. Convenience of the Parties and Witnesses/Interests of Justice Favor Transfer

Both convenience and the interest of justice will best be served by transferring this case to the Southern District of California. Petitioner was convicted and sentenced in California and it is in California that relevant records and witnesses are likely to be found. See Braden, 410 U.S. at 493-94. Moreover, before any federal court could reach the merits of this case, it would first have to resolve the threshold issue of whether Petitioner has exhausted his state court remedies; a federal court in the Southern District of California will be more familiar with that State’s laws and procedures. See id., at 499. Further, the State of Arizona has no interest in the subject matter of this case, whereas the State of California has a strong interest in the subject matter. See Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987) (a litigant’s choice of forum is entitled to only minimal consideration “if the operative facts have not occurred within the forum and the forum has no interest in the parties or the subject matter”).

/ / /

³ If Petitioner is no longer “in custody” pursuant to a state court judgment, he may not seek relief under 28 U.S.C. § 2254.

1 **IT IS ORDERED:**


2 (1) The Motion for Temporary Restraining Order is **denied**. (Doc.# 3.)

3 (2) The Petition must be transferred to the United States District Court for the
4 District of California pursuant to 28 U.S.C. § 1404(a). (Doc.# 1.)

5 DATED this 5th day of October, 2007.

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Neil V. Wake
United States District Judge

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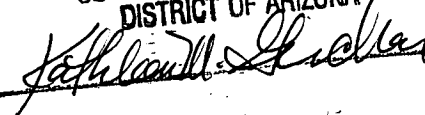
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I hereby attest and certify on 10/22/07
that the foregoing document is a full, true and correct
copy of the original on file in my office and in my cus-
tody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA

By  Deputy

CASREF, HABEAS, PPS, TRANSFER-OUT

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:07-cv-01890-NVW--JCG**

Maloo v. Stolc
Assigned to: Judge Neil V Wake
Referred to: Jennifer C Guerin (PS)
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 10/03/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Cyrus Keki Maloo
A#29306942

represented by **Cyrus Keki Maloo**
A# 29306942
DC-Eloy
Detention Center
1705 E Hanna Rd
Eloy, AZ 85231
PRO SE

V.

Respondent

Bruno Stolc
Warden

Date Filed	#	Docket Text
10/03/2007	<u>1</u>	PETITION for Writ of Habeas Corpus, filed by Cyrus Keki Maloo. (Attachments: # <u>1</u> Exhibit)(HIH) (Entered: 10/03/2007)
10/03/2007	<u>2</u>	NOTICE OF ASSIGNMENT: (HIH) (Entered: 10/03/2007)
10/03/2007	<u>3</u>	MOTION for Temporary Restraining Order to Stay Further Deportation Proceedings Until After His 28 U.S.C. 2254 Has Been Adjudicated by Cyrus Keki Maloo. (KMG) (Entered: 10/04/2007)
10/09/2007	<u>4</u>	ORDER denying Petitioner's <u>3</u> Motion for Temporary Restraining Order. The Petition must be transferred to the United States District Court for the District of California pursuant to 28 U.S.C. 1404(a) <u>1</u> . Signed by Judge Neil V Wake on 10/5/07.(KMG) (Entered: 10/09/2007)
10/22/2007	<u>5</u>	Case transferred to Southern District of California. Certified copy of transfer order, and docket sheet sent. (KMG) (Entered: 10/22/2007)

PACER Service Center			
Transaction Receipt			
10/22/2007 13:55:15			
PACER Login:	us4935	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-01890-NVW--JCG
Billable Pages:	1	Cost:	0.08

I hereby attest and certify on 10/22/07
that the foregoing document is a full, true and correct
copy of the original on file in my office and in my cus-
tody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA

By Kathleen M. Leach Deputy

Cyrus Maloo
A# 29306942
Eloy Detention Center
1705 East Hanna Road
Eloy, AZ 85231

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OCT 03 2007	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	S DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, Phoenix**

CYRUS MALOO, A# 29306942,

Petitioner,

vs

BRUNO STOLC, WARDEN,

Respondent.

CASE NO. CV07-1890-PHX-NVW (JCG)

**PETITION UNDER 28 USC § 2254 FOR
WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY.**

**PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY, WITH ATTACHED
SUPPLEMENT/MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF.**


Cyrus Maloo, pro se

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		
Name (under which you were convicted): Cyrus Keki Maloo		Docket or Case No.:
Place of Confinement: Eloy Detention Center 1705 East Hanna Road Eloy, AZ 85231		Prisoner No.: A# 29306942
Petitioner (include the name under which you were convicted) CYRUS KEKI MALOO		Respondent (authorized person having custody of petitioner) BRUNO STOLC, Warden
The Attorney General of the State of California , Edmund G. Brown Jr.		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
Superior Court of California, Northwest District
14400 Erwin Street Mall Van Nuys, California 91401
 (b) Criminal docket or case number (if you know): LA 047232
2. (a) Date of the judgment of conviction (if you know): _____
 (b) Date of sentencing: June 27, 2005
3. Length of sentence: 3 Years
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
5. Identify all crimes of which you were convicted and sentenced in this case: PC § 451 (b);
Arson of an inhabited structure

6. (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input checked="" type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

 (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☐

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): _____

Page 4

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

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12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts and law supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Sixth Amendment Violation; Ineffective Assistance of Counsel

(a) Supporting facts and law (State the specific facts and law that support your claim.):

Please see attached Supplement/Memorandum in Support

(b) If you did not exhaust your state remedies on Ground One, explain why: Defense Counsel told Petitioner that he had no right to appeal on any ground.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

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Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: Fifth Amendment Violation; Plea Agreement was not Knowingly, Intelligently, or Voluntarily Entered Into

(a) Supporting facts and law (State the specific facts and law that support your claim.):

Please see attached Supplement/Memorandum in Support

(b) If you did not exhaust your state remedies on Ground Two, explain why: Ineffective Assistance
of Counsel; Counsel advised that no appeal could be taken

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

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Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: N/A

(a) Supporting facts and law (State the specific facts and law that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

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GROUND FOUR: N/A

(a) Supporting facts and law (State the specific facts and law that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

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(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: Grounds One and Two were not previously presented because defense counsel advised Petitioner that he could not appeal; Any appeal or remedy filed to the State would now be untimely due to counsel's faulty advice.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: For the reasons stated in 13 (a) neither ground was presented

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

Page 13

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Superior Court of California, Northwest District
14400 Erwin Street Mall Van Nuys, CA 91401 Motion to Vacate and Dismiss original
charges on the ground that the plea agreement was coerced when Defendant was under
duress and was not knowingly, intelligently or voluntarily entered into

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Leonard Ference
1827 Florida Ave, NW Apt 102 Washington, DC 20009

(b) At arraignment and plea: Same

(c) At trial: N/A

(d) At sentencing: Same

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

Page 14

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. * Petitioner was given faulty advice regarding his right to appeal;
Petitioner was advised by counsel that he would not be deported; However, Petitioner is
now being held for deportation (2 years later)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

N/A Pro se

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A

SUPPLEMENT/MEMORANDUM IN SUPPORT

PROLOGUE:

In the interest of Justice, this writ should be heard and acted on accordingly.

Defendant-Petitioner Cyrus Keki Maloo (Hereinafter, "Maloo") was railroaded by a greedy attorney. The attorney that represented Maloo in the criminal proceedings also represented him in an automobile accident claim prior to the unrelated criminal proceeding. Due to a tragic automobile accident Maloo sustained traumatic brain damage and is now mentally challenged. Maloo has also been diagnosed with severe bipolar.

Accompanying this writ is a copy of Maloo's medical records, including a form from Maloo's doctor stating that Maloo should be on disability and has severe headaches on a daily basis. Maloo also has behavioral abnormalities, frequent mood swings, etc.

Maloo's personal injury attorney, in a quest for another chunk of Maloo's settlement money, hoodwinked a man whose mental state was definitely out of tune with reality to allow him to defend him and to plead guilty to a charge of arson knowing full well that the fire was an accident. Counsel also told Maloo that he would not be deported if he pleaded guilty to the charge. Subsequently, counsel told Maloo that he could not appeal the court's decision.

When this Honorable Court takes into consideration the Supplement in Support of Maloo's 2254 and Maloo's physician's report(s), the truth will be evident and, even though Maloo is late in filing his writ of habeas corpus, may very well determine that the time for bringing his petition should be tolled.

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GROUND ONE: Sixth Amendment Violation; Ineffective Assistance of Counsel**Throughout the Criminal Proceedings**

Retained Defense Counsel, Leonard Ference was not a criminal defense attorney. Ference was/is a personal injury lawyer whose only interest and concern in this case was monetary. Ference had represented Maloo in a personal injury case for which he was well compensated. Knowing that Maloo had a large sum of money from the personal injury claim, (the result of an accident that left Maloo with mental and emotional injury due to severe head trauma), Ference charged Maloo a hefty fee and proceeded to represent Maloo without having the skills necessary to defend in a criminal case. Based on the type and gravity of the offense Maloo was charged with, he was entitled to a vigorous advocate, a lawyer, trained in criminal defense, a lawyer who would fight for him.

Ference manipulated and programmed Maloo into believing that he was receiving a great deal and to respond as though he was satisfied with the proffer and Ference's performance at the plea hearing. However, because Maloo was not actually guilty of breaking any laws, Ference knowingly gave Maloo bad advice. Ference's representation was ineffective under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed 2d 674 (1984). The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. McMann v. Richardson, 397 U.S. 749 (1970), Cuyler v. Sullivan, 446 U.S. 335 (1980); Morrison v. Duckworth, 898 F.2d 1298 (7th Cir 1990); Shaddy v. Clark, 890 F.2d 1016 (8th Cir 1989) (per curium); U.S. v. Angelone, 894 F.2d 1129 (9th Cir 1990); Strickland v. Washington, 466 U.S. 668 (1984); U.S. v. Cronin, 466 U.S. 648, 653, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984) ("Without counsel, the right to a trial itself would be of little avail"); Bolander v. Singletary, 16 F.3d 1547 (11th Cir 1994); Battle v. Delo, 28 F.3d 1547 (8th Cir 1994).

In Strickland v. Washington, 466 U.S. 668 (1984), the U.S. Supreme Court established a two-prong test with which to evaluate ineffective assistance of defense counsel claims: (1) That counsel's performance fell below an objective standard of reasonableness, and (2) That counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome of the proceedings. Lockhart v. Fretwell, 506 U.S. 364; 113 S.Ct. 838; 122 L.Ed 2d 180 (1993) quoting Strickland, *supra* at page 687; U.S. v. Springs, 988 F.2d 746 (7th Cir 1993); Kyles v. Whitley, 5 F.3d 806 (5th Cir 1993) cert. Granted 114 S. Ct 1610 (1994); reasonable probability of a different result with effective assistance. Both prongs in the case at bar can be met.

Ference knew full well, and the court was also aware, that Maloo had suffered severe head trauma in an accident. Ference knew that Maloo had mental problems as a result of the accident that caused the severe head trauma. In fact, Ference stated that his client was temporarily insane at the time this case was evolving. Maloo was in a state of depression and was taking prescribed drugs in an attempt to end his life. Maloo, a habitual smoker, was smoking at the time of the incident. In his depressed mental state and under the influence of prescription drugs, Maloo flicked a cigarette at, what he believed to be, an open window. However, the window screen propelled the still lit cigarette butt back into the condo. Maloo did not have any intention of starting a fire. This was clearly an accident, not an intentional act of arson.

As stated in the death of Pro Wrestler Chris Benoit; Benoit suffered brain damage from head trauma. Head trauma can cause substances called tau proteins to build up in the brain, which in turn can trigger a toxic release of phosphorous, killing brain and nerve cells. "These extreme changes throughout Chris Benoit's brain are enough to explain aberrant behavior, including

suicide and even homicide," said Julian Bailes, chairman of neurosurgery at West Virginia University and a founding member of the Sports Legacy Institute.

Benoit's brain showed the same degenerative processes that doctors working for the institute found in the brains of four men who had played pro football and committed suicide.

The post-mortem diagnosis: Chronic Traumatic Encephalopathy (CTE), a form of brain damage that is associated with blows to the head and was found in former NFLers Mike Webster, Terry Long, Andre Waters and Justin Strzelczyk.

Maloo wanted to die; to end his suffering; not to cause harm to his family or home. Maloo loves his family and would never intentionally harm them.

There is no question that Maloo tried to put the fire out. He was laboring under the influence of the pills he had taken and his efforts were futile. Maloo did not want to be burned to death; he wanted the pills to painlessly kill him. When Maloo was unable to get the fire out, and the fire department and police had arrived and were attempting to put out the fire and save Maloo's life, Maloo, lost in his delusional aberrant behavior, donned a mask and fetched an unloaded gun. Maloo was determined to die. The pills were obviously not doing the job Maloo expected of them. When Maloo stepped outside he was contemplating finishing his task another way. Maloo had no ammunition, just an empty gun. The police knew Maloo's state of mind and knew that his gun was empty. The officers fired sixty (60) shots in Maloo's direction; yet Maloo was not hit by any of the bullets fired in his direction.

The police, realizing Maloo's fragile mental state, were not attempting to harm Maloo but rather to subdue him. The police displayed absolute wisdom and control in this case. However, the District Attorney in this case chose to bring pain and added mental stress to an already mentally distressed Maloo.

The court exacerbated the problem when it permitted the over zealous District Attorney to prosecute Maloo. No reasonable fact-finder would have allowed this case to proceed. To make matters worse, the court at the plea hearing phase of the proceedings, had questions regarding Maloo's understanding and knowledge of the plea process presented by someone other than the court. It is the obligation of the court to present questions at the plea hearing.

Now, due to the chain of events, Maloo is facing exile to a country that is foreign to him. It is unreasonable to believe that Maloo would agree to give up his family and home for a life of exile. Maloo's plea was not knowingly and voluntarily because it was induced by Counsel's faulty legal advice. *See, United States v. Streater*, 70 F.3d 563 (5th Cir. 1993). Leonard Ference boldly fabricated to his long time client that a term of probation would be imposed upon him and that he need not worry himself about deportation. Ference's lack of defense skills and faulty decisions and advice have ruined Maloo's life and Maloo's family's lives.

The Prosecutor, knowing full well the facts of this case, should have realized and most likely did realize that Maloo did not commit a criminal act. Hell bent on another notch in the proverbial career belt, the prosecutor pushed for a conviction. No aggravated felony existed in this case; it was an unfortunate accident caused by a very depressed and delusional man. Maloo should have been placed in a medical facility equipped to help him, not a prison.

For the points of authority and reasons stated herein Ground One, the conviction and sentence in this case must be set aside and the charges must be dismissed with prejudice.

GROUND TWO: Fifth Amendment Violation; Due Process – Coerced Plea

The court, in *Santobello v. New York*, 404 U.S. 257 30 L.Ed 2d 427, 92 S.Ct 495 (1991) held that plea bargain agreements must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. There were no safeguards for Maloo in this case. There

was no written plea agreement in this case. If the agreement had been put into writing counsel would have had to explain to Maloo what the agreement entailed. Instead, just before going to court counsel told Maloo to just plead guilty. Counsel also told Maloo to just answer "yes" to every question the court asked regarding his understanding of the proceedings. Counsel programmed Maloo like a robot. In United States v. Herrera, 265 F.3d 349 (6th Cir. 2001), the court held that; a plea agreement need not be in writing, although a written agreement is the preferred practice.

The court in Turner v. Calderon, 281 F.3d 851 (9th Cir. 2002) held that a defendant has the right to make reasonably informed decision whether to accept a plea offer. Maloo wasn't afforded any rights to do anything due to his attorney's incompetence. Maloo would never have agreed to be exiled to a place where he would not have his family, a home, or the medical care he needs.

In Grabowski v. Jackson County Public Defenders' Office, 47 F.3d 1386 (5th Cir. 1995) the court held that to be valid, a guilty plea must be knowingly, intelligently and voluntarily entered, defendant must be shown to understand nature of charges and consequences of plea. In this case Attorney Leonard Ference misrepresented the entire plea process to Maloo. Counsel claimed that Maloo was insane when the incident occurred, then proceeded to tell Maloo to plead guilty, go to prison and, subsequently be exiled from his family and home to a foreign country. Maloo did not knowingly, intelligently, or voluntarily enter into any plea agreement.

Legal innocence is a fair and just reason to withdraw a guilty plea. See United States v. Salgado-OCampo, 159 F.3d 322 (7th Cir. 1998). Maloo was/is innocent. Even though his sentence has been served, the plea agreement must be set aside and the charge against Maloo must be dismissed with prejudice.

CONCLUSION

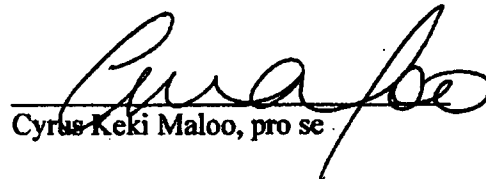
Maloo respectfully moves this Honorable Court to see the injustice in this case and to reverse and hold the State of California to a standard of justice more becoming of a civilized society.

Maloo was/is innocent of any charges that were brought against him while in a state of diminished capacity. Maloo would never have intentionally caused a fire in his own home, as evidenced by the medical reports that accompany this petition. Maloo needed to be hospitalized, not incarcerated.

It has been said "It is just as well that Justice is blind; she might not like some of the things done in her name if she could see them."

For the points of authority and reasons stated herein, the conviction and sentence in this case must be set aside and the charges must be dismissed with prejudice.

Respectfully submitted this 27th day of September, 2007.


Cyrus Keki Maloo, pro se

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Petition, attached Memorandum in Support, and accompanying Medical Reports, have been sent this 27th day of September, 2007 by placing the same in the United States Mail, First Class postage prepaid for delivery to;

Bruno Stolz, Warden
Eloy Detention Center
1705 East Hanna Road
Eloy, AZ 85231

AND

Honorable Edmund G. Brown Jr., Attorney General
Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550


Cyrus Maloo

Mailed pursuant to the "mailbox rule" of Houston v. Lack, 487 U.S. 266 (1988)

MEDICAL RECORDS

NHMC-RBC-MENTAL HEALTH SERVICE PATIENT AFTERCARE PLAN

PATIENT'S NAME: CYRUS MALOO DISCHARGE DATE: 7/28/03
 PSYCHIATRIST: DR. GROSZ PHONE NUMBER: 818-885-7383
 NATURE OF PROBLEM/ILLNESS: ☐ SEE ATTACHMENT: (PATIENT/FAMILY/ EDUCATION)

IMPULSE CONTROL DISORDER

EXPECTED COURSE OF RECOVERY: ☐ SEE ATTACHMENT (PATIENT/FAMILY/ EDUCATION)

REMAINS GUARDED

RECOMMENDED FOLLOW-UP: ☐ REFER TO NURSING DISCHARGE FORM FOR FOLLOW UP APPOINTMENTS.

MEDICATION & INSTRUCTIONS: ☐ SEE ATTACHED MEDICATIONS SHEET AND PATIENT/ FAMILY ED. FORM AND NURSING DISCHARGE FORM FOR ADDITIONAL INSTRUCTIONS.

NAME/ AGENCY: VINEK SANKH M.D. ^{REFERRALS}
 ADDRESS: 7320 WOODLANE AVE SUITE 250, West Hills, Calif
 PHONE: (818) 593-2191 ⁹¹³⁰⁷

NAME/ AGENCY: DR. SPINDELL
 ADDRESS: WEST HILLS
 PHONE: (818) 883-6978

COMMENTS: SHARE! 1310-305-8878

COMMENTS: COMMUNITY RESOURCE INFO: 1-800-339-6993

I HAVE RECEIVED A COPY OF THIS AFTERCARE PLAN WITH ALL ATTACHMENTS

PATIENT'S SIGNATURE

DATE

PARENT/CONSERVATOR/ GUARDIAN SIGNATURE

DATE

DESIGNATED RECIPIENT SIGNATURE RELATIONSHIP TO PATIENT DATE

PATIENT DECLINES TO DESIGNATE ANOTHER PERSON TO RECEIVE A COPY OF THIS PLAN

PATIENT'S SIGNATURE

DATE

STAFF NAME (PLEASE PRINT)

SIGNATURE

DATE

401) (ORIGINAL TO PATIENT-COPY TO PATIENT CHART
 CHW

NORTHridge HOSPITAL

MALOO, CYRUS K

MR 81-25-75

GROSZ, DANIEL
 DOB 10/30/71 31Y M
 7/18/03 ERSNHF

F/C: 5011

36089035

CONSULTATION

PATIENT NAME: MALOO, CYRUS KEKI
 CONSULTING PHYSICIAN: VIVEK SAVUR, M.D.
 REQUESTING PHYSICIAN: DANIEL GROSZ, M.D.

NEUROLOGICAL CONSULTATION

Date of Consultation: 07/24/2003

Dear Dr. Grosz:

Thank you for your referral of this 31-year-old gentleman who is seen in neurological consultation of severe headaches and cognitive difficulties. This gentleman was involved in a motor vehicle accident in which the car in which he was riding as a passenger was struck by another vehicle, the patient suffering multiple facial fractures as well a compound fracture of his mandible, cerebral contusions with hemorrhagic contusion in the left frontal lobe. He was initially unconscious for an indeterminate period of time, probably a few minutes, then subsequently admitted to Northridge Hospital Medical Center where he was operated on by Dr. Marc Kerner. He was in the ICU for a number of days during which time he demonstrated occasional bizarre behavior and disorientation. Initially, his memory impairment was quite severe, but it gradually improved.

When I saw him in the office a month or so later, he had begun to have some mild left-sided headaches. His cognitive impairment and the headaches were of some concern and he was started on Aricept 10 mg daily. He was advised to see Dr. Spindell for formal psychological testing, but then he was lost to follow-up. Fortunately, he called back again about a month later and the symptoms were persist and in fact, getting worse, so I advised him to see Dr. Spindell. He was also started on Aricept 10 mg daily and given some Midrin for the headache, which initially was occasional. The headaches started to get worse, accelerated more in terms of frequency, as well as intensity, until he began to get them nearly every day and were of considerably more intense. Unfortunately, he did not seek any medical advice. He describes blinding left hemispheric headaches, sometimes they become generalized associated with photophobia and phonophobia, with nasal congestion and sometimes drooping of the left upper eyelid.

Northridge Hospital
 Medical Center
 1300 Rescoe Boulevard
 Northridge, California 91328
 (818) 885-8500

Patient: MALOO, CYRUS KEKI
 Doctor: VIVEK SAVUR, M.D. {}
 Med Rec#: 81-25-75
 Room #: IL22310B
 Date of Admission: 07/18/2003

CONSULTATION

He was seen in the office in March and discharged to go back to work in April, at his insistence, as he felt good or needed to maintain a full time job because of his finances. It appears that he was having some difficulty at work concentrating, especially with his mathematical abilities which were severely impaired. He then started developing behavioral abnormalities. He then started to demonstrate some disturbing behavior with frequent mood swings, difficulty having control, sometimes unprovoked. Finally, he got into a physical altercation with his wife. What exactly happened at home is not clear. Evidently, she accosted him with a stick and he retaliated by pulling the stick away from her and hitting her with it. He has little recollection of this at present, but he does remember striking her.

He had an MRI scan of the brain done in March of this year, which did not demonstrate an abnormalities and an electroencephalogram, again March, which was normal. The other concern that I had at the time was that he was having epileptic attacks manifesting themselves as psychomotor fugues.

He had been admitted following incarceration for a few days following the assault. Presently, he is on _____ and is doing much better. The headaches seem to have improved considerably. These headaches are mostly left-sided and seem to be preceded by a sensation of being clubbed followed by a half hour or 20 minutes later by the back of the head feeling as if it is going to explode. There is no associated tinnitus, no difficulty chewing or swallowing. The headache will last for about six hours and at this time, he has to lie down. There is no focal weakness or numbness and the headache seems to exhaust him the rest of the day. In-between, he gets a bifrontal headache, which has been present virtually every day, all day, but it is usually relieved by Advil.

The other problem are his cognitive difficulties, which have been described by Dr. Spindell in detail.

PAST MEDICAL HISTORY: Otherwise unremarkable except for some mild obsessive-compulsive tendencies. He in generally has enjoyed good physical health except for essential tremor. He has not been on any medication though.

PHYSICAL EXAMINATION

GENERAL APPEARANCE: The physical examination reveals a well-

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Med Rec#: 81-25-75
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Date of Admission: 07/18/2003

CONSULTATION

developed, pleasant gentleman, with multiple facial scars that appear to be healing.

NEUROLOGICAL EXAMINATION: His neck is supple. He is alert and oriented to time, place, and person. He is oriented to time, place and person. His speech is normal. His sensation is intact. Serial subtraction of 7 was poorly performed, cannot do beyond 93. He cannot name the last three Presidents. He had difficulty with memory and retention, he repeats only 8 words out of 10 at one minute and 5 words out of 10 in two minutes. He is able to repeat four digits backwards, but can remember 7 forward. Orientation seems to be relatively intact. There is no impairment of judgement or flight of ideas. He is not quite rational. There is no paranoid ideation. The pupils are 3-mm, round and reactive to light. Extraocular movements are intact. Field of vision is full. Eye movements are full. Smile is symmetrical. Gag reflex is intact, uvula is midline. Motor strength and muscle strength are intact in both the upper and lower extremities. 2+, there is a three cycle per second tremor of both hands.

IMPRESSION:

1. Post-traumatic migraines. Bilateral cerebral hemorrhagic contusions with psychophysiologic dysfunction.
2. Cognitive impairment secondary to automobile accident.

RECOMMENDATIONS: Depakote 1500 mg per day, this is the maximum dose I would use for headache control. Inderal might also be considered, both for the tremor as well as the headaches, but from my memory, it appears he had bene started on Inderal formerly for the tremor about six to seven years ago, and he had more difficulties with his cognitive functioning. I would also add Maxalt as needed to the regimen.

VIVEK SAVUR, M.D.

VS: YOG/03783619/ses
D: 07/24/2003 11:12
T: 07/24/2003 21:07
JOB #: 85940

CC: DANIEL GROSZ, M.D.

**Northridge Hospital
Medical Center**
18300 Roscoe Boulevard
Northridge, California 91328
(818) 885-8500

Patient: MALOO, CYRUS KEKI
Doctor: VIVEK SAVUR, M.D. {}
Med Rec#: 81-25-75
Room #: IL22310B
Date of Admission: 07/18/2003

CONSULTATION

VIVEK SAVUR, M.D.

AMY ALKIRE, M.D.

**DIPLOMATE, AMERICAN BOARD
OF NEUROLOGY**

ADULT NEUROLOGY

Patient Name: Maloo, Cyrus
Office Visit Date: 04/23/03

Cyrus's headaches are considerably improved. He continues to have some memory difficulty, irritability, mood swings. Attention span and retentive memory deficits.

The patient is concerned and anxious to go back to work, however I do not think that he is ready yet, probably 4 weeks from now. He is concerned that his job may be in jeopardy. I have advised him to continue Effexor. I will see him again in 4 weeks.

Vivek Savur, M.D.

VS: RS/ip

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(818) 593-2191 Fax (818) 593-2194

29525 Canwood Street
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(818) 708-3577

DATE: July 11, 2003
PATIENT: MALOO, CYRUS

Cyrus Maloo is not doing well. He is having problems with anger control, becoming more disinhibited, with explosions of anger towards his wife as well as towards his small children, ages 2 and 4, which is unwarranted. Moreover, he is getting paranoid about his children wanting to take him away from the mother, and he understands this is unreasonable. He is having difficulty at work, not so much with conceptual thinking but with organizational thinking and mathematical ability.

The headaches are better since I started him on Depakote, and I think the mood swings may be improving. He is currently on 1000 mg a day.

Another severe problem appears to be a persistent sense of panic, inability to deal with situations which involve public speaking or involve being in a room with the other executives.

His resting heart rate is 106.

His memory also is impaired because he has had fugue-like states where he does not know where is driving or what he is doing. He once drove himself downtown and realized he was not where he was suppose to be.

I would like to put him on disability but he wants to continue working. I have increased the Effexor to 150 mg a day, Depakote 1000 mg a day, and started him on Xanax XR 2 mg a day. I would like to see him in a month. He will call me back in a week. If he is not better, I am referring him to a psychiatrist.



VIVEK SAVUR, M.D.

VS/dls/lc

Dictated but not reviewed

VIVEK SAVUR, M.D.

Diplomat, American Board of Neurology

DATE: NOVEMBER 8, 2004

PATIENT: MALOO, CYRUS

Mr. Maloo recently experienced acute exacerbation of previous cognitive and behavioral symptoms as a result of injuries sustained from the automobile accident.

He is undergoing treatment in a secure facility for complications from an organic brain syndrome due to hemorrhagic brain contusions. It will pose undue hardship on his person to be physically present at the hearing. To ensure his health and safety he will have to be at the treatment facility for an indefinite period of time. If he were to leave the hospital, he would have to sign out against medical advice.



VIVEK SAVUR, M.D.

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Agoura Hills, California - 91301
(818) 787 - 0952

VIVEK SAVUR, M.D.

Diplomate, American Board of Neurology

October 28, 2004

To: The District Attorney, Los Angeles

Re: Mr. Cyrus Maloo

Mr. Cyrus Maloo, an unfortunate 32 year old male, has been under my care for head and facial injuries sustained in an automobile accident in November of 2002.

Mr. Maloo was apparently traveling as a passenger in a car which was struck on the side by another vehicle that was pulling out of a side street, resulting in Mr. Maloo suffering severe trauma to the head and face. He was taken to Northridge Hospital and was found to have multiple orbital fractures, a displaced fractured skull, multiple fractures of the jaw, zygoma and the nose.. He had a complex open frontal sinus fracture, forehead laceration of 11 cm., supraorbital fracture resulting in a proptosis, and airway compromise. He underwent a tracheotomy, a lateral canthotomy of the right orbit, sinus surgeries and surgeries to repair the jaw.

Up until the accident Mr Maloo was working full-time as a District Manager for Public Storage, a storage company, owned his home, where he lived with his wife of 10 years and 2 young children. Since then he has lost his job as a District Manager because of headaches which were for the most part controlled with medication, but mostly due to impaired cognition and impaired both fluid and crystallized intelligence. He has retentive memory impairment even though memory imprintation has been spared. He has difficulty with mathematical concepts and an inability to retrieve or retain new memory. The loss of his job and his inability to find other employment subsequently resulted in the loss of his home.

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PATIENT: MALOO, CYRUS

Page 2

October 28, 2004

His symptom complex is impressive as a direct result of the automobile accident. Apart from the retentive memory deficits and impairment of cognition, his judgement is also impaired although surprisingly, abstraction is spared. Mood and behavior since the accident have been labile, i.e. unsteady, easily disarranged, secondary to frontal lobe hemorrhagic contusions. He is unable to concentrate and has a markedly decreased attention span. He tends to fly off the handle easily and is easily provoked and irritable. Along with this he has severe headaches, insomnia and tremors. He and his wife started having significant marital problems and he moved out of the apartment but subsequently moved back because of the children, but this did not help his state of mind.

For his neurological symptoms he is on Depakote for migraines and mood swings, Zyprexa for psychosis, Xanax for anxiety, Inderal for the tremors and Aricept for the memory. With periodic adjustment of medications, formal psychological follow-up with William Spindel, Ph.D, a psychologist who has been treating Mr. Maloo since the accident, the patient was on the slow road to recovery.

In September of 2004, Mr. Maloo was involved in a 2 car accident with another hit-and-run vehicle, where his car apparently flipped over and was totaled. He struck his head but did not lose consciousness. Since the second accident he has been severely agitated and then developed an acniform rash over his body due to stress, and his migraines have recurred. He has become more forgetful, for instance, he forgot he had an appointment to see me a few days ago, forgets the names and dosage of his medications and he is more tremulous. This second accident unfortunately aggravated the symptoms from his initial head injury.

He now displayed moods of extreme despair, despondency and nihilism, which has been exacerbated by a very trying situation in his home. When I spoke with him on the phone just before the Police arrived, he was experiencing a psychotic break with reality. His wife had reportedly harangued him about his disabilities and he wanted the Police to come and

PATIENT: MALOO, CYRUS

Page 3

October 28, 2004

shoot him and "put me out of my misery". This state of mind resulted in his volatile and destructive behavior on October 12, 2004, and he was admitted to West Hills Hospital in a comatose state, in shock, from multiple prescription drug overdose.

In my opinion, the overall longterm outlook for this young man is optimistic with continued pharmacological treatment and with the judicious use of psychotherapy.

I am reasonably optimistic that with therapy he will return to a productive status as a taxpaying citizen. Incarceration in a State Prison will not only be counter productive, but more cogently, will do irreparable harm to an eminently salvageable situation.

He should be re-evaluated by a licensed clinical psychologist and/or a psychiatrist more comprehensively, to determine the extent and depth of his deficiency. I am sure Dr. William Spindel would be able to recommend suitable treatment facilities. Neurologically, he is status post hemorrhagic brain contusion with organic brain syndrome with psychosis, possible bipolar illness.

Sincerely,



VIVEK SAVUR, M.D.

VIVEK SAVUR, M.D.**DIPLOMATE, AMERICAN BOARD OF NEUROLOGY**

DATE: September 5, 2003

PATIENT: MALOO, CYRUS

Mr. Maloo, as of today, still continues to demonstrate significant mood swings, hyper-irritability and severe, intermittent anxiety.

He continues to have significant cognitive problems, impaired executive function and severely impaired mathematical ability, resulting from hemorrhagic cerebral contusions from a car accident in December of 2002.

It might be another year for him to recuperate fully, if at all he does so. In my experience, I don't think he will recover fully to his premorbid status.



VIVEK SAVUR, M.D.
VS/ss

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Agoura Hills, California 91301
(818) 707-0962

WILLIAM A. SPINDELL, Ph.D.
29101 Sherman Place, Ste. 207
West Hills, CA 91307
Telephone: (818) 883-6978

DISABILITY CERTIFICATE

Date 9-5-03

To whom it may concern:

I hereby certify that CYRUS MALOC

has been under my professional care, and was:

☒ Totally Incapacitated See below.
☐ Partially Incapacitated

From 12-1-02 To PRESENT

Remarks: SUSTAINED SEVERE SKULL
JAW AND OTHER Fx WHICH HAVE
PRECIPITATED SOME REDUCTION IN
IMPULSE CONTROL - NOW UNDER
MEDICAL CONTROL.

Signed WAS

CONSULTATION

PATIENT NAME: MALOO, CYRUS KEKI
 CONSULTING PHYSICIAN: VIVEK SAVUR, M.D.
 REQUESTING PHYSICIAN: DANIEL GROSZ, M.D.

NEUROLOGICAL CONSULTATION

Date of Consultation: 07/24/2003

Dear Dr. Grosz:

Thank you for your referral of this 31-year-old gentleman who is seen in neurological consultation of severe headaches and cognitive difficulties. This gentleman was involved in a motor vehicle accident in which the car in which he was riding as a passenger was struck by another vehicle, the patient suffering multiple facial fractures as well a compound fracture of his mandible, cerebral contusions with hemorrhagic contusion in the left frontal lobe. He was initially unconscious for an indeterminate period of time, probably a few minutes, then subsequently admitted to Northridge Hospital Medical Center where he was operated on by Dr. Marc Kerner. He was in the ICU for a number of days during which time he demonstrated occasional bizarre behavior and disorientation. Initially, his memory impairment was quite severe, but it gradually improved.

When I saw him in the office a month or so later, he had begun to have some mild left-sided headaches. His cognitive impairment and the headaches were of some concern and he was started on Aricept 10 mg daily. He was advised to see Dr. Spindell for formal psychological testing, but then he was lost to follow-up. Fortunately, he called back again about a month later and the symptoms were persist and in fact, getting worse, so I advised him to see Dr. Spindell. He was also started on Aricept 10 mg daily and given some Midrin for the headache, which initially was occasional. The headaches started to get worse, accelerated more in terms of frequency, as well as intensity, until he began to get them nearly every day and were of considerably more intense. Unfortunately, he did not seek any medical advice. He describes blinding left hemispheric headaches, sometimes they become generalized associated with photophobia and phonophobia, with nasal congestion and sometimes drooping of the left upper eyelid.

Northridge Hospital
 Medical Center
 18300 Roscoe Boulevard
 Northridge, California 91328
 (818) 885-8500

Patient: MALOO, CYRUS KEKI
 Doctor: VIVEK SAVUR, M.D. {}
 Med Rec#: 81-25-75
 Room #: IL22310B
 Date of Admission: 07/18/2003

CONSULTATION

developed, pleasant gentleman, with multiple facial scars that appear to be healing.

NEUROLOGICAL EXAMINATION: His neck is supple. He is alert and oriented to time, place, and person. He is oriented to time, place and person. His speech is normal. His sensation is intact. Serial subtraction of 7 was poorly performed, cannot do beyond 93. He cannot name the last three Presidents. He had difficulty with memory and retention, he repeats only 8 words out of 10 at one minute and 5 words out of 10 in two minutes. He is able to repeat four digits backwards, but can remember 7 forward. Orientation seems to be relatively intact. There is no impairment of judgement or flight of ideas. He is not quite rational. There is no paranoid ideation. The pupils are 3-mm, round and reactive to light. Extraocular movements are intact. Field of vision is full. Eye movements are full. Smile is symmetrical. Gag reflex is intact, uvula is midline. Motor strength and muscle strength are intact in both the upper and lower extremities. 2+, there is a three cycle per second tremor of both hands.

IMPRESSION:

1. Post-traumatic migraines. Bilateral cerebral hemorrhagic contusions with psychophysiologic dysfunction.
2. Cognitive impairment secondary to automobile accident.

RECOMMENDATIONS: Depakote 1500 mg per day, this is the maximum dose I would use for headache control. Inderal might also be considered, both for the tremor as well as the headaches, but from my memory, it appears he had bene started on Inderal formerly for the tremor about six to seven years ago, and he had more difficulties with his cognitive functioning. I would also add Maxalt as needed to the regimen.

VIVEK SAVUR, M.D.

VS:YOG/03783619/ses

D: 07/24/2003 11:12

T: 07/24/2003 21:07

JOB #:85940

CC: DANIEL GROSZ, M.D.

**Northridge Hospital
Medical Center**
18300 Rescoe Boulevard
Northridge, California 91328
(818) 885-8500

Patient: MALOO, CYRUS KEKI
Doctor: VIVEK SAVUR, M.D. {}
Med Rec#: 81-25-75
Room #: IL22310B
Date of Admission: 07/18/2003

CONSULTATION

April 3, 2003

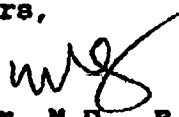
Robert Hale, M.D.
18546 Roscoe Blvd. #120
Northridge, CA 91324

RE: MALOO, Cyrus

Dear Bob,

Cyrus was in on April 3, 2003. The postoperative CT scan shows excellent obliteration of the frontal sinus with good apposition of bone. His headaches are resolving. He has a small supraorbital brow scar which I told him we would deal with in three to four months, but at this point he is doing quite well. I am releasing him to go back to work and he will follow up with me in three months.

Sincerely yours,



Marc M. Kerner, M.D., F.A.C.S.
Assistant Clinical Professor of Surgery, UCLA
Adjunct Professor of Communication Sciences, CSUN

MMK:els/jlc
cc: Vivek Savur, M.D.

MAR-03-2003 03:07 PM WILLIAM SPINDELL PHD

918 883 7871

P.01

MEMO

DATE: 3.3.03TO: DR. ALVARE SAVUR 888-4492 (FA)FROM: DR. WILLIAM A. SPINDELL 5932194

JAN ABRAHAMS OFFICE MGR. _____

SUBJECT: CYRUS MALDO

YOUR REFERENCE #: _____

MESSAGE: REPORT IN DETENTION. QUICK LOOK RESULTS:I.Q. IN FRONT NORMAL REGION. PRO NABID (P. PROBABLY)
SLIGHTLY HIGHERMEMORY - SIGNIFICANT DEVIATION FROM NORMATIVE LEVEL ON
ALL 8 SCALES OF REYNOLDS MEMORY TEST - REVERSED. VERY DISTRACTIBLEEXECUTIVE FUNCTIONS - VERY MUCH IMPAIRED. PRESUMPTIVE
DIFFICULT FOR HIM TO ADAPT NEW EFFECTIVE STRATEGIES.HAND-EYE: INDEPENDENT TESTER - SOME USUALLY DIFFICULTIESPERCEPTUAL: AUDITORY AND VISUAL CAUTION IN DRIVING (REVERSED)PERSONALITY - DEPRESSIVE, LACKING SOMATIC FEELS, DISTRACTED
THOUGHT PROCESS INTEGRITYREC: NOT RETURN TO WORK X 2 WEEKSWILL SEND REPORT AS SOON AS TRANSCRIPTION COMPLETESREPLY REQUESTED: /

FOR YOUR INFORMATION: _____

23101 SHERMAN PLACE, SUITE 207, WEST HILLS, CALIFORNIA 91307

TELEPHONE: (818) 883-8878

FAX NO. : 8185950887

FROM : ECHOSOF INDIA

Sep. 11 2003 12:22PM PS

STATE OF CALIFORNIA

RECEPTION CENTER MEDICAL CLEARANCE / RESTRICTION INFORMATION CHRONO

DEPARTMENT OF CORRECTIONS

CDC 125-C-1 (2/97)

CDC NUMBER

V87319

NAME

Maloo, CYRUS K.

7-13-05

MEDICAL ELIGIBILITY:

☐ FULL DUTY☐ CAMP☐ CCF☒ RESTRICTED/LIGHT DUTY☐ MEDICALLY UNASSIGNED☐ LONG TERM
☐ SHORT TERM☐ WELL-HANDICAPPED
PROGRAM ELIGIBLE☒ FOOD HANDLING☐ CLEARED
☐ NOT CLEARED

MEDICAL RESTRICTIONS:

☒ SEIZURE DISORDER

DATE OF LAST

SEIZURE: 2004

OTHER RESTRICTIONS:

PARKINSONS

INSTITUTION

NIFSP

PHYSICIAN'S SIGNATURE AND TITLE

☐ CHRONIC INFECTIOUS DISEASE,
GROUP I, II, III, IV☐ COMMUNICABLE DISEASE
(i.e., TB, HEPATITIS, SYPHILIS)☐ ROUTINE FOLLOW-UP NEEDED
☐ URGENT FOLLOW-UP NEEDED☐ HEARING IMPAIRED☐ HAS HEARING AID ☐ NEEDS H. AID☐ BLIND ☐ SERIOUS VISION PROBLEMMEDICATION ALLERGIES: ☒ NO ☐ YES☐ DIABETIC: ☐ ORAL ☐ INJECTION☐ RESPIRATORY, (i.e., ASTHMA)
☐ MEDICATION REQUIRED☐ HEART DISEASE / HYPERTENSION
☐ MEDICATION REQUIRED☐ ORTHOPEDIC PROBLEM, DEBILITATING
☐ LOWER BUNK NEEDED
☐ LOWER TIER NEEDED☐ MOBILITY IMPAIRED:☐ PARAPLEGIC☐ QUADRAPLEGIC☐ WHEELCHAIR☐ WALKER☐ CANE☐ AMPUTEE:☐ LEGS: L R☐ ARMS: L R☐ PROSTHESES:☐ FULL ☐ PARTIAL☐ PSYCHIATRIC CONDITION☐ CLEARED ☐ NEEDS EVAL.☐ PSYCHIATRIC MEDICATION NEEDED☐ YES☐ NO☒ DENTAL CLASS: 1 2 3 4 5☒ FOLLOW UP NEEDED:☐ ROUTINE ☐ URGENT☐ PREGNANT: TRIMESTER: 1 2 3

DISTRIBUTION:

ORIGINAL - C-FILE
COPY - CC 1COPY - CDC HEALTH RECORD
COPY - INMATE

DATE

7/15/05

NOTE: SEND COPY OF PH
TO PHARMACY AFI

EDICATION

D.

Time	Problem #	
05	①	Motrin 200mg po q 6 hours prn headaches x 90 days
	②	^{now on temaze} add to chronic care seizures program - MDE 90 days
05	③	cons for lower bunk (seizures) and "K" beard (tremulousness)
01	④	Dilantin level yellow NP
05	①	^{new} Dilantin 100mg - 3 caps q hs x 90 days
	②	clarify above Motrin x 90 days Yellow
		A. Conn
		Noted/copy to Pharmacy. ——— M. H. / M. H.

NKDA

INSTITUTION

CC1

ROOM/WING

L2

CDC NUMBER, NAME (LAST, FIRST, MI)

Maloo-V87319

Confidential
client information
See W & I Code, Sections 4514 and
5328

PHYSICIAN'S ORDERS

DATE	TIME	NOTES
08	2005 (1910)	Code 33- New arrival. To no line for seizures and Mental Health follows our patients. Will resume work for Seizures & Mental Health tonight. Chart Screened. NARDI R.N.

05	0900	Yctc. E. Kray, PhD
05	1330	Chart screened at L.C.C.T. TB code is 33. 128-C on file. Psych aware of C.C.M.S. ^{person} status. C.C. for seizure disorder. Diet for labs ordered.

TUTION <i>CCD</i>	PHYSICIAN	ROOM NO.	CDC NUMBER, NAME (LAST, FIRST, MI) <i>Maloo, C</i> <i>U 87319</i>
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PHYSICIAN'S PROGRESS NOTES

7230 (7/90)

OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

HOUR OUTPATIENT MEDICATION RECORD

CDC CMP-ASU MED/MAR FORM Style #2 (08/93)

V-87319 MALOO, C 660693- 0 DR: VO SONIAZID TAB 300MG TABS ON MONDAY/THURSDAY *** PILL LINE *** Start: 07/15/2005 Stop: 01/11/2006	2 V-87319 MALOO, C 660694- 0 DR: VO PYRIDOXINE 50MG 1 TAB WITH EACH DOSE OF ISONIAZID. ** PILL LINE ** Start: 07/15/2005 Stop: 01/11/2006	3 V-87319 MALOO, C 668698- 0 DR: ORUENE, ALAFURO EXTENDED-PHENYTOIN 100MG TAKE 3 CAPSULES AT BEDTIME DAILY Start: 10/18/2005 Stop: 01/16/2006
V-87319 MALOO, C 668699- 0 DR: ORUENE, ALAFURO IBUPROFEN 200MG TAKE 1 TABLET EVERY 6 HOURS AS NEEDED Start: 10/18/2005 Stop: 01/16/2006	5 V-87319 MALOO, C 673822- 0 DR: KAMEL L. KAMEL BUSPIRONE 15MG *** DISCONTINUED *** Start: 11/04/2005 Stop: 11/06/2005	6 V-87319 MALOO, C 673823- 0 DR: KAMEL L. KAMEL SERTRALINE 100MG *** DISCONTINUED *** Start: 11/04/2005 Stop: 11/06/2005

ONTH:

Nov

MONTH:

MONTH:

DAY	DAY
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31	31

Identification of RN/MTA Initials

Initials:	Name:	Initials:	Name:	Initials:
			<i>L. Wright MTA</i>	<i>(CA)</i>
Initials:	Name:	Initials:	Name:	Initials:

F INMATE: MALOO, C

CDC NUMBER: V-87319

HOUSING: EG2-042L

DATE	TIME	
1/15/05	1400	PT w/ CCHHmel & Dr. Frank
9/24/05		Prepared - L M M M M
OCT 12 2005		labs drawn and sent to lab
10-14-05	1250	states "tremulous since car accident" + wants bottom bunk crano + no shaving crano 2° to alleged hx seizures "life ruined by car accident, he + cuts face due to tremulousness" O.) 985-117-12 128/87 211# (34 no) 7 occupied h/A (34 no)
		tremulous male, UNWO AAX3, able to walk on heels + toes, EOM intact, PEARLA. multiple face scars, S1S2 adv. Lungs CRA-resp even numleb. abd. soft, flat, nmtender c/ss no prec. organomegaly. extremities bilat equal. pppx edema. extensive docum. on chart re: car accident in 2003.
		A.) PTSS (post trauma stress syndrome);
		② seizures + tremulousness @ headaches 3-4 mo.
		P.) ① encourage IM to read stress management books at library + to verbalize difficulty of ICU experience. ② lower bunk + shaving crano 1/4" permanent - add to chronic care (seizures)
		③ Motrin 200mg po q 6 hours prn.
		E.) discussed stress management, exercise, + diet
INSTITUTION	PHYSICIAN	ROOM NO.
CC1	L	12
		CDC NUMBER, NAME LAST, FIRST, MI
		Jellison P

V87319

7/13/2005

NKSP-RC

MALOO, CYRUS

DOB: 10/30/71

AGE: 33

PHYSICIAN'S PROGRESS NOTES

DATE	TIME	
19051450		Non compliant c 4 RX, 4 refills complete
18/06/10		S. Flu on lab test result drawn 10/12/05: O - NAD T 97, 84, BIP 118/74. ENT - clear nasal discharge mild pressure maxillary sinuses. Lungs clear HEART - 3/4 heart sound Abd. soft, non tender, c Normoactive BS. A - Elevated BIP - 94 Nasal congestion P - Hepatitis panel Nasorex 4 qid nasal daily x 30 days Simcennell w.p.
2706		Obson review appeared <i>[Signature]</i>

LOCATION
CCT

HOUSING UNIT

INTERDISCIPLINARY PROGRESS NOTES

7230 (Rev 04/03)
OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

CDC NUMBER, NAME (LAST, FIRST, MI) AND DATE OF BIRTH

Mc100

V87319.

FROM : ECHOESOFINDIA

FAX NO. : 8185958887

Sep. 11 2003 12:32PM P5

PROHEALTH

Advanced Imaging Institute

Beverly Hills - Chino - Covina - La Habra - Oceanside - Orange - Oxnard - Palm Desert - Palm Springs - Riverside
Santa Clarita - Tarzana - Temecula - Thousand Oaks - Toluca Lake - Tustin - Ventura - West Hills - West LA
888-329-6011 Fax: 818-710-6311 www.prohaelthscan.com

SAVUR, VIVEK M.D.
7320 WOODLAKE AVE #250
WEST HILLS CA 91307

7.6

PATIENT NAME: MALOO, CYRUS MRN : 013073
DOB: 10/30/1971 AGE/SEX: 31/M

EXAM DATE: 02/03/03 ACCESSION : 5026
MODALITY : MRI
EXAMINATION: BRAIN WITH AND WITHOUT CONTRAST

INDICATION FOR SCAN:

Status post trauma. Evaluation for temporal lobe contusion.

TECHNIQUE:

Using the GE Signa High Field 1.5 Tesla Open-Style MRI scanner, the following sequences were obtained:

1. Axial T1, T2 and FLAIR
2. Sagittal T1
3. Coronal T2
4. Axial diffusion trace with ADC map
5. Following the intravenous administration of 20 cc of gadolinium, axial, coronal T1 weighted sequences were obtained.

FINDINGS:

The cerebral sulci and lateral ventricles are normal for the patient's stated age. Specifically, there is no evidence of contusion noted in the temporal lobes. There is no evidence of mass, mass effect or abnormal enhancement. The sella is not enlarged. No extra-axial fluid collections are noted. The flow-voids of the vertebral, basilar and carotid arteries are intact. The sella is not enlarged.

There is mucosal thickening noted in the bilateral ethmoid air cells as well as the left maxillary sinus.

IMPRESSION:

1. No evidence of intracranial mass, mass effect or hemorrhage.
2. Mucosal thickening in the bilateral ethmoid air cells and left maxillary sinus.

Thank you for referring this patient.

FROM : ECHOESOFINDIA

FAX NO. : 8185950087

Sep. 11 2003 12:32PM PG

P. KASHFIAN, M.D.
Board Certified Radiologist
/mju

Electronically signed by Paul Kashfian, M.D.

DATE: February 26, 2003

PATIENT: MALOO, CYRUS

Cyrus is improving as far as moods are concerned. The Effexor really appears to be helping him. The depression and anxiety are better. The tremors are worse. His memory impairment is still the same. He is unable to do simple arithmetic calculations, and he cannot remember 2 out of 3 items after 15 seconds let alone 2 minutes.

PHYSICAL EXAMINATION:

Coarse tremors in both hands are somewhat worse, and he is more subdued. His fundi are benign. Eye movements are full. Corneal reflexes are intact.

I have advised him to start Aricept samples along with the Effexor for 5 weeks. I will see him then.



VIVEK SAVUR, M.D.

VS/dls

Dictated but not reviewed

FROM : ECHOESOFINDIA

FAX NO. : 8185950087

Sep. 11 2003 12:31PM P4

ELECTROENCEPHALOGRAPH REPORT

DATE: February 3, 2003

PATIENT: - MALOO, CYRUS

TECHNICAL SUMMARY: This electroencephalogram was performed using the standard 10-20 electrode system with bipolar and referential montages.

The dominant background activity was in the 10-11 hertz range bilaterally symmetrical best seen over the posterior head regions and attenuated on eye opening. No focal or paroxysmal slowing or epileptiform activity is seen. Sleep was not recorded.

CONCLUSION: Normal awake EEG.

VIVEK SAVUR, M.D.

VS/dts/lc

Dictated but not reviewed

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Phoenix**

Cyrus Keki Maloo)	
Petitioner,)	
)	
)	
v.)	Case No.: 2:07-cv-01890-NVW--JCG
)	NOTICE OF ASSIGNMENT
)	
Bruno Stolc)	
Respondent.)	

NOTICE OF ASSIGNMENT

On 10/3/07 , Petitioner filed a pro se Petition which has been assigned the case number listed above. This case has been assigned to District Court Judge Neil V Wake and has been referred to Magistrate Judge Jennifer C Guerin (PS) and the Court's Legal Staff. When any action is taken in this case, you will be notified by Court order.

Richard H. Weare
District Court Executive/Clerk

cc: Petitioner

WARNING!

Failure to comply with the following rules will result in your document being STRUCK and/or your case being DISMISSED:

- (1) You must file a Notice of Change of Address if your address changes.
- (2) You must correctly label any further documents with the above assigned caption and case number. LRCiv 7.1(a).
- (3) You must sign your name and date every document you file. FED. R. CIV. P. 11
- (4) You must provide an original and one copy of any document to be filed.(if you request a conformed copy, you must provide an original and two (2) copies). LRCiv 5.4
- (5) You must mail copies of every document you file to all respondents or their attorneys, FED. R. CIV. P. 5(a), and every document you file must include a certificate stating the date a copy of the document was mailed to respondents or their attorneys.

Cyrus Maloo
A# 29306942
Eloy Detention Center
1705 East Hanna Road
Eloy, AZ 85231

<input checked="checked" type="checkbox"/> FILED	<input type="checkbox"/> LODGED
<input type="checkbox"/> RECEIVED	<input type="checkbox"/> COPY
OCT 08 2007	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, Phoenix

CYRUS KEKI MALOO
A# 29306942

Petitioner,

vs

BRUNO STOLC, WARDEN,
Respondent.

CASE NO. CV07-1890-PHX-NVW(JC4)

**MOTION FOR TEMPORARY
RESTRAINING ORDER TO STAY
FURTHER DEPORTATION
PROCEEDINGS UNTIL AFTER HIS 28
U.S.C. § 2254 HAS BEEN ADJUDICATED.**

Defendant-Petitioner Cyrus Keki Maloo (Hereinafter, "Maloo") respectfully moves this Honorable Court for a Temporary Restraining Order until the accompanying writ of habeas corpus pursuant to 28 U.S.C. § 2254 has been adjudicated and the issues therein resolved. Maloo believes that he will be successful in obtaining his freedom once a reasonable fact-finder reviews the prejudicial events that occurred in Maloo's State Case.

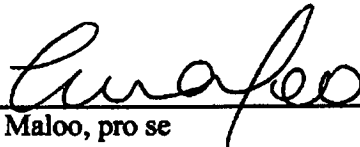
There is no doubt that irreparable harm will come to Maloo should ICE, or an Immigration Court not wait for a decision on Maloo's writ of habeas corpus or review in the State of California, and just deport him.

Maloo is facing exile to India; a country he barely knows. If Maloo is deported and subsequently succeeds in his efforts to have his charge dismissed, it is probable that he will not be able to retain his legal status in the United States. It will take years of struggling to regain his legal status. In the meantime, Maloo will be distanced from his family, unable to work, and

without the medical care that he so desperately needs. (A copy of Maloo's medical records accompanies his 2254 writ)

For the reasons stated herein, Cyrus Maloo respectfully requests that a Temporary Restraining Order be granted.

Respectfully submitted this 27th day of September, 2007.


Cyrus Maloo, pro se

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been sent this 27th day of September, 2007 by placing the same in the United States Mail, First Class postage prepaid for delivery to;

Bruno Stolc, Warden
Eloy Detention Center
1705 East Hanna Road
Eloy, AZ 85231


Cyrus Maloo

Mailed pursuant to the "mailbox rule" of Houston v. Lack, 487 U.S. 266 (1988)

SC

1

2

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5

6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8

9

10 Cyrus Keki Maloo,

11 Petitioner,

12 vs.

13 Warden Bruno Stolc,

14 Respondent.

No. CV 07-1890-PHX-NVW (JCG)

ORDER

15 Petitioner Cyrus Keki Maloo, who is currently confined in the Eloy Detention Center

16 (EDC) in Eloy, Arizona,¹ has filed a *pro se* "Petition Under 28 U.S.C. § 2254 for Writ of

17 Habeas Corpus by a Person in State Custody" naming EDC Warden Bruno Stolc as

18 Respondent. (Doc.# 1.)² Petitioner has not paid the \$5.00 filing fee. (*Id.*) Petitioner

19 challenges his criminal conviction and sentence entered in California state court. Petitioner

20 has also filed a "Motion for Temporary Restraining Order to Stay Further Deportation

21 Proceedings Until After his 28 U.S.C. § 2254 Has Been Adjudicated." (Doc.# 3.) The Court

22 will transfer this action to the District of California pursuant to 28 U.S.C. § 1404(a) and deny

23 the motion for a temporary restraining order.

24 / / /

25 / / /

26

27 ¹ Immigration and Customs Enforcement (ICE) currently has legal and physical

28 custody of Petitioner as an immigration detainee.

² "Doc.#" refers to the docket number of documents filed in this case.

1 **I. Background**

2 Petitioner alleges the following facts. Petitioner was convicted of arson of an
3 inhabited structure in the Superior Court of California, Northwest District pursuant to a guilty
4 plea and sentenced to three years in prison on June 27, 2005. (Doc.# 1 at 2.) Petitioner did
5 not file a direct appeal. ICE apparently initiated deportation proceedings against Petitioner
6 based upon his California conviction.

7 **I. Motion for a Temporary Restraining Order**

8 In his motion for temporary restraining order, Petitioner asks the Court to stay his
9 deportation proceedings pending resolution of his § 2254 petition. As an initial matter, the
10 Court has been informed by ICE General Counsel that a final order of removal has not been
11 entered against Petitioner and that a master hearing in Petitioner's deportation proceedings
12 is not scheduled to occur until November 1, 2007. In short, removal from the United States
13 is not imminent.

14 Further, a petitioner seeking to challenge deportation proceedings must file a petition
15 pursuant to 28 U.S.C. § 2241. Magana-Pizano v. INS, 200 F.3d 603, 609 (9th Cir. 1999).
16 Petitioner may not seek relief with respect to his immigration proceedings in an action
17 brought pursuant to 28 U.S.C. § 2254. For these reasons, Petitioner's motion for a temporary
18 restraining order will be denied.

19 **II. Transfer of Venue**

20 A district court may transfer "any civil action to any other district or division where
21 it might have been brought" for the convenience of the parties and witnesses or in the interest
22 of justice. 28 U.S.C. § 1404(a). The decision to transfer under § 1404(a) lies within the
23 discretion of the district court and should be determined based upon notions of convenience
24 and fairness on a case-by-case basis. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29
25 (1988).

26 **A. This Action Could Have Been Brought in the District of California**

27 Jurisdiction to hear a habeas corpus petition lies in any district court having
28 jurisdiction over the petitioner's custodian. See Braden v. 30th Jud. Circuit Court of Ky, 410

1 U.S. 484, 495 (1973) (construing 28 U.S.C. § 2241(a)). A district court can issue a habeas
 2 writ “within its jurisdiction” so long as the custodian can be reached by service of process.
 3 Id. In amending the habeas corpus statutes, Congress has indicated that a habeas case should
 4 be “resolved in the court which originally imposed the confinement or in the court located
 5 nearest the site of the underlying controversy.” Id. at 497 (citing H. R. Rep. No. 1894, 89th
 6 Cong., 2d Sess. (1966); S. Rep. No. 1502, 89th Cong., 2d Sess. (1966) U.S. Code Cong. &
 7 Admin. News 1966, p. 2968; and United States v. Hayman, 342 U.S. 205 (1952)); see also
 8 Ortiz-Sandoval v. Gomez, 81 F.3d 891, 895 (9th Cir. 1996) (citing Braden, 410 U.S. at 498-
 9 99); McCool v. New York State, 29 F.Supp.2d 151, 158 (W.D.N.Y. 1998).

10 The conviction and sentence Petitioner challenges in this action were entered in
 11 California state court. Therefore, this § 2254 action could have originally been brought in
 12 the Southern District of California.³

13 **B. Convenience of the Parties and Witnesses/Interests of Justice Favor Transfer**

14 Both convenience and the interest of justice will best be served by transferring this
 15 case to the Southern District of California. Petitioner was convicted and sentenced in
 16 California and it is in California that relevant records and witnesses are likely to be found.
 17 See Braden, 410 U.S. at 493-94. Moreover, before any federal court could reach the merits
 18 of this case, it would first have to resolve the threshold issue of whether Petitioner has
 19 exhausted his state court remedies; a federal court in the Southern District of California will
 20 be more familiar with that State’s laws and procedures. See id., at 499. Further, the State
 21 of Arizona has no interest in the subject matter of this case, whereas the State of California
 22 has a strong interest in the subject matter. See Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir.
 23 1987) (a litigant’s choice of forum is entitled to only minimal consideration “if the operative
 24 facts have not occurred within the forum and the forum has no interest in the parties or the
 25 subject matter”).

26 / / /

27 _____

28 ³ If Petitioner is no longer “in custody” pursuant to a state court judgment, he may not
 seek relief under 28 U.S.C. § 2254.

1 **IT IS ORDERED:**

2 (1) The Motion for Temporary Restraining Order is **denied**. (Doc.# 3.)

3 (2) The Petition must be transferred to the United States District Court for the
4 District of California pursuant to 28 U.S.C. § 1404(a). (Doc.# 1.)

5 DATED this 5th day of October, 2007.

6

7



8

Neil V. Wake
United States District Judge

9

10

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK

RICHARD H. WEARE
DISTRICT COURT EXECUTIVE / CLERK OF COURT
SANDRA DAY O'CONNOR U. S. COURTHOUSE,
SUITE 130
401 WEST WASHINGTON STREET, SPC 1
PHOENIX, ARIZONA 85003-2118

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RONNIE HONEY
CHIEF DEPUTY CLERK
SANDRA DAY O'CONNOR U. S. COURTHOUSE,
SUITE 130
401 WEST WASHINGTON STREET, SPC 1
PHOENIX, ARIZONA 85003-2118

WILLIAM M. MCCOOL
CHIEF DEPUTY CLERK
EVO A. DECONCINI U.S. COURTHOUSE
405 W. CONGRESS, SUITE 1500
TUCSON, ARIZONA 85701-5010

October 22, 2007

United States District Court
Southern District of California
4290 Edward J. Schwartz United States Courthouse
940 Front Street
San Diego, CA 92101

Dear Clerk,

RE: CV 07-1890-PHX-NVW

Pursuant to the order of this court, the above captioned case is being transferred to your Court for all further proceedings. Enclosed is certified copy of the transfer order and docket sheet. The complete case file may be accessed via our website at: www.azd.uscourts.gov.

Please acknowledge receipt of the same and indicate your district's case number on the enclosed copy of this letter and return. Thank you.

Sincerely,

RICHARD H. WEARE, Clerk/DCE

S/ K. Gerchar
K. Gerchar, Deputy Clerk

cc: all counsel

Receipt is acknowledged of the documents described herein.

New Case Number: _____

Deputy Clerk

The staff of the Clerk's Office ensures the effective, efficient and professional delivery of clerical and administrative services, while fostering a customer-friendly and employee-friendly environment.

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Cyrus Keki Maloo

DEFENDANTS

FILED
OCT 23 2007
Bruno Stolo CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *KM* DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Cyrus Keki Maloo A#29306942
DC-Eloy Detention Center
1705 E. Hanna Road
Eloy, AZ 85231

07 CV 2057 JAH (LSP)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

	PT	DEF		PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

10/23/07

SIGNATURE OF ATTORNEY OF RECORD